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MEMORANDUM

To: Utah State Building Board
From: David G. Buxton 
Date: September 10, 2008
Subject: **Amendments to Rule R23-30**

Recommendation

DFCM recommends that the Board approve the attached amendments to Rule 23-30 for filing and publication by the Utah Division of Administrative Rules. After the 30-day comment period, DFCM will bring this rule back to the Board for final consideration.

Background

Rule 23-30 defines the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603, and establishes requirements for loan eligibility.

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Attachment

R23. Administrative Services, Division of Facilities Construction and Management.

R23-30. State Facility Energy Efficiency Fund.

R23-30-1. Purpose.

This rule is for the purposes of

(1). Conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) Establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for this Rule.

Pursuant to Utah Code Section 63A-5-603, the State Building Board shall make rules establishing criteria, procedures, priorities, conditions for the award of loans from the State Facility Energy Efficiency Fund and other requirements for the rule as specified in Section 63A-5-603.

R23-30-3. Definitions.

(1). "Board" means the State Building Board.

(2) "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4). "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63-9-67.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

(a) Building envelope improvements;

- (b) Increase or improvement in building insulation;
 - (c) Lighting upgrades;
 - (d) Lighting delamping;
 - (e) Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
 - (f) Improvements to energy control systems;
 - (g) Other energy efficiency projects or programs that a state agency can demonstrate will result in a significant reduction in the consumption of energy. ; and
 - (h) Renewable energy projects.
- (4) There is no limit to the total number of loans a single state agency may receive from the Fund.
- (5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an acceptable energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

- (1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.
- (2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:
- (a) Building materials;
 - (b) Doors and windows;
 - (c) Mechanical systems and components including HVAC and hot water;
 - (d) Electrical systems and components including lighting and energy management systems;
 - (e) Labor necessary for the construction or installation of the energy efficiency project;
 - (f) Design and planning of the energy efficiency project;
 - (g) Energy audits that identify measures included in the energy efficiency project; and
 - (h) Inspections or certifications necessary for implementing the energy efficiency project.
- (3) The following costs are not eligible for financing from the Fund: The costs of a renovation project that are not directly related to energy efficiency measures;
- (4) In cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.
- (5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

- (1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.
- (2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial

assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

- (a) . Name and location of the state agency;
- (b) Name and location of the building or buildings where the energy efficiency project will take place;
- (c) A description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;
- (d) A description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;
- (e) A description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;
- (f) Projected or estimated energy savings that result from each measure undertaken as part of the project;
- (g) Projected or estimated energy cost savings from each measure undertaken as part of the project;
- (h) A description of how energy cost savings will be measured and verified as well as describing the commissioning procedures for the project;
- (i) A description of any additional community or environmental benefits that may result from the project; and
- (j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for its evaluation.

(6) The SBEEP Manager shall make a recommendation to the Board using the following criteria and scoring:

- (a) The feasibility and practicality of the project (maximum 30 points);
- (b) The projected energy cost payback period of the project (maximum 20 points);
- (c) The energy cost savings attributable to eligible energy efficiency measures (maximum 30 points);
- (d) The financial need of the agency for the loan including its financial condition (maximum 10 points);

(e) The environmental and other benefits to the state and local community attributable to the project (maximum 10 points);

(f) The availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

(g) If there are matching funds from another source that is available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

(h) The SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the appropriate expertise assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

(7). The SBEEP Manager provides advice and recommendations to the Board. The SBEEP Manager is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8). Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

- (a) Provide a brief description of each project reviewed by the SBEEP Manager ;
- (b) List the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;
- (c) List the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;
- (d) List the total score and the score for each evaluation criterion for each application;
- (e) Specify projects recommended for funding and those not recommended for funding;
- (f) Provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than ten (10) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager. The Board will then review and make determinations regarding the applications.

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the state agency that the Board considers necessary to ensure that the state agency:

(a) uses the proceeds to pay the cost of the energy efficiency measures; and

(b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve or deny any such requests if good cause has been submitted by the state agency for such increase.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

- (a) This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or
- (b) This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.
- (6) The Board will establish repayment terms and interest rates.
- (7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to SBEEP annual reports due at the beginning of the calendar quarter in which the anniversary of the loan disbursement occurs. This report shall include the following:

- (a) A description of the performance of the building and of the performance of the measures included in the energy efficiency project;
- (b) A description of any notable problems that have occurred with the building or the project;
- (c) A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;
- (d) Copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;
- (e) Documentation of energy consumed by the building in the prior year; and
- (f) Other information requested by the SBEEP Manager or deemed important by the state agency.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, which is longer.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, agency, loans

Authorizing, and Implemented or Interpreted Law: 63A-5-603, HB198